

INTERIM STIPULATED AGREEMENT
FOR AREAS WITHIN AND NEAR IDWR ADMINISTRATIVE BASIN 36

This Interim Stipulated Agreement (Agreement) is entered into between the undersigned ground water users and surface water users, or their representatives, in consideration of the promises stated in this Agreement. The term of the Agreement shall extend until to December 31, 2003.

1. This Agreement is made in reference to the following facts:
 - 1.1 The Director of the Idaho Department of Water Resources (Director) stated his intent to entirely curtail diversions under certain water rights for ground water beneath portions of Basin 36, an administrative sub-basin. The Director's intent was based upon his findings, set forth in his administrative order designating the Thousand Springs Ground Water Management Area dated August 3, 2001, that diversions of ground water under such rights cause significant reductions in spring flows tributary to the Thousand Springs reach of the Snake River, and that those reductions will further reduce the diminished water supply available to satisfy senior priority surface water rights during current drought conditions.
 - 1.2 The parties are unable to agree to the extent of interconnection of ground water and surface water sources in the Snake River Basin and any alleged injury to surface water rights as a result of the diversion of water from the Eastern Snake Plain Aquifer (ESPA);
 - 1.3 The Idaho Department of Water Resources (IDWR) has committed to complete reformulating and recalibrating the ESPA Ground Water Model by December 31, 2003, contingent on continued funding from the Idaho Legislature and other entities;
 - 1.4 The new ESPA Ground Water Model is expected to provide the parties with additional information regarding the alleged impacts of ground water diversions from the ESPA on spring discharges and flows in defined reaches of the Snake River; and
 - 1.5 The parties desire to avoid the need for litigation at this time on the nature and extent of the alleged injury to senior priority surface water rights caused by diversions of ground water or surface water under junior priority water rights within Basin 36 pending the completion of the new ESPA Ground Water Model. The parties understand that this agreement and IDWR administrative actions described in this agreement may include water rights in areas immediately adjacent to Basin 36 as necessary to respect geohydrologic characteristics and water user organization boundaries. All subsequent references to Basin 36 in the agreement include this qualification.

2. Interim Stipulated Agreement:

- 2.1 Upon the payment of necessary advances by North Snake Ground Water District (NSGWD) and Magic Valley Ground Water District (MVGWD), Northside Canal Company (NSCC), shall apply annually in 2002 and 2003 for up to 40,000 acre feet of water from rental pools above Milner for diversion into the NSCC canal at such times and in such manner as NSCC agrees. NSGWD agrees to pay the necessary advances for up to 25,000 acre feet of water, and MVGWD agrees to pay the necessary advances for up to 15,000 acre feet of water. The separate obligations of NSGWD and MVGWD to pay for storage shall be based upon their proportionate share as described above. The obligation of NSGWD and MVGWD to provide 40,000 acre feet of water will be reduced by any other water provided pursuant to this or any other interim stipulated agreement for replacement water in Basin 36 through the NSCC system by entities other than the NSGWD and MVGWD.
- 2.2 The replacement water will be used to enhance the spring flows in the Thousand Springs reach by 40,000 A.F. The NSGWD members will, to the maximum extent possible, use storage water or canal company shares delivered through the Northside Canal and use Northside Canal Company waste water in lieu of pumping ground water. To the extent that the full 40,000 A.F. is not used for irrigation in lieu of groundwater pumping, the unused portion of the 40,000 A.F. will be used to enhance the spring flows in the Thousand Springs reach. Periodic reports will be prepared describing how the replacement water has been used pursuant to this Agreement.
- 2.3 NSCC agrees to rebate any monies provided by ground water users that are not used to acquire storage water required by paragraph 2.1.
- 2.4 Those parties providing replacement water agree to equitably apportion any costs associated with delivery of the water provided pursuant to paragraph 2.1. NSCC agrees to forego conveyancing costs for delivery of such water provided NSGWD uses its best efforts to use the water identified in paragraph 2.5.3. NSCC agrees to use its best efforts to minimize any other costs associated with the delivery of such water.
- 2.5 Those parties providing replacement water agree to, in good faith, explore the feasibility, funding and implementation of the following measures:
 - .1 NSGWD members who are shareholders in NSCC will make best efforts to use their NSCC shares on appurtenant lands before using ground water, unless the NSCC water is not available.
 - .2 NSGWD members within the NSCC service area will make best efforts to use the storage water described in paragraph 2.1 in lieu of pumping a similar amount of ground water. (Use existing NSCC headgates.)

- .3 NSGWD members who are also NSCC shareholders within the NSCC service area will make best efforts to use water pumped from NSCC sediment ponds and other waste water in lieu of ground water.
- .4 NSGWD will make periodic reports describing the actions being investigated and undertaken pursuant to paragraph .
- 2.6 NSGWD and Buckeye agree to use their best efforts to provide twelve (12) CFS of water to Buckeye from Riley Creek by the 2002 irrigation season as contemplated in the July 2001 letter to NSGWD.
- 2.7 The following provision will apply during the irrigation season in any year in which the following conditions occur, unless otherwise agreed by the parties: If by April 1 in any year none of the 40,000 acre feet of water identified in paragraph 2.1 is provided either by this agreement or by other replacement water, the undersigned holders of ground water rights agree that their diversion and use of ground water irrigation water rights will be ten (10) percent less than their base of ground water irrigation use, based on power and fuel consumption records, or other basis acceptable to the Director. If by April 1, some but not all of the 40,000 acre feet identified in paragraph 2.1 is provided (by this agreement and/or other replacement water) an adjustment to ground water reductions shall be made in proportion to the percentage of the 40,000 acre feet provided. In lieu of individual reductions, ground water districts may achieve reductions on a district wide basis. The parties agree to meet and establish a procedure for determining the base upon which any reductions in ground water use will be determined.
- 2.8 Safe Harbor: In exchange for the commitments enumerated in paragraphs 2.1 through 2.7 the undersigned holders of senior priority surface water rights and their representatives agree not to seek either judicially or administratively the curtailment or reduction, other than as provided in paragraph 2.7, of any junior water rights held by or represented by the undersigned within Basin 36 for the term of this agreement.
- 2.9 By providing replacement water or, in the alternative, agreeing to a reduction in ground water irrigation diversions and use, the undersigned holders of ground water rights and their representatives do not concede that diversions of ground water are causing injury to senior priority surface water rights, nor do the undersigned holders of senior priority surface water rights and their representatives concede that the amount of replacement water accepted under this stipulated agreement compensates for the extent of the injury they allege.
- 2.10 The parties agree not to oppose the State of Idaho's motion to the District Court for the Snake River Basin Adjudication requesting authority for the Director to implement interim administration of water rights in Basin 36. The parties understand that interim administration will include: (1) enforcement of the provisions of the stipulated agreement; (2) curtailment of illegal diversions (i.e.

any diversion without a water right or in excess of the elements of a water right); (3) measurement and reporting of diversions of water rights; and (4) curtailment of out-of-priority diversions found by the Director to be causing injury to senior water rights that are not covered by a stipulated agreement or a mitigation plan approved by the Director. The parties reserve the right to file motions to participate or submit other pleadings to participate in proceedings on the motion as they deem appropriate.

- 2.11 The parties agree to work collaboratively with the Director to expeditiously create a water district or water districts and to formulate initial instructions to the associated watermaster(s) to administer water rights of the water district or water districts. Such instructions shall include the elements of administration identified in paragraph 2.10. The parties agree not to oppose the Director's initial instructions to these watermaster(s) that are jointly developed through this collaborative process.
- 2.12 The parties understand that the Director will issue an administrative order approving this Agreement, which will include the elements of interim administration identified in paragraph 2.10. Holders of water rights within the area subject to interim administration under this agreement who are not party to this or another stipulated agreement, either directly or as a member of a party to this Agreement, shall not be entitled to the benefits of the safe harbor provided by paragraph 2.8. The parties agree to request that the Director notify water right holders in Basin 36 who are not party to this or another stipulated agreement, that they may be subject to curtailment under the prior appropriation doctrine as established by Idaho law.
- 2.13 Other junior water right holders not members of NSGWD or MVGWD who desire the safe harbor protections of this agreement may join this agreement upon agreeing to pay a proportionate share of the costs and to be bound by all other terms of this agreement.

3. Process for Future Conflicts:

- 3.1 The undersigned parties agree to develop a process for ascertaining the extent of any injury caused by ground water diversions in the Basins under junior priority water rights to senior priority surface water rights, for sharing of information and for the development of any mitigation plans subsequently required.
- 3.2 For the term of this Agreement, the parties agree to use their best efforts to ensure completion of the reformulation and recalibration of the ESPA Ground Water Model and to continue discussions regarding a long-term agreement, including:
 - .1 The ESPA Model capabilities.

- .2 Adoption of statewide water management rules to govern IDWR's overall administration of water rights from surface and ground water sources.
 - .3 Formalization of administrative structure for and administration of connected ground water and surface water uses in accordance with the prior appropriation doctrine.
 - .4 Adoption of conjunctive administration rules based on the results from the new ESPA ground water model and other necessary information to more specifically govern IDWR's administration of water rights from connected sources of surface and ground water within the ESPA.
 - .5 Consideration of a mechanism to account for changes in the use of water rights since the commencement of the SRBA and development of a means to administer water rights in the context of such changes.
4. Enforcement:
- 4.1 The parties understand the Director intends to approve this stipulated agreement in lieu of issuing curtailment orders under Idaho Code § 42-233b, and that in the event this Agreement is breached, any party may petition the Director, or the Director on his own initiative, may seek an appropriate remedy.
 - 4.2 Upon the SRBA District Court issuing an order for interim administration of water rights within Basin 36 and related areas, this Agreement will be enforced through such administration.
5. Disclaimers:
- 5.1 This Agreement represents a settlement of disputed issues regarding the administration of water rights from interconnected ground water sources and surface water sources within portions of the Snake River Basin. The undersigned are unable to agree on the extent and locations of interconnections of ground water and surface water sources in the Snake River Basin along the reach of the Snake River along and above the Thousand Springs reach of the Snake River and the extent of injury, if any, to senior priority surface water rights as a result of ground water diversions from the ESPA under junior priority water rights. In order to avoid litigation of these issues at this time, the undersigned have entered into this Agreement. Because this Agreement does not fully resolve the issues, the parties agree that this Agreement shall not be construed or interpreted so as to waive or prejudice any contention by any party regarding the legal or factual relationship between water rights from surface and ground water sources in the Snake River Basin along and above the Thousand Springs reach of the Snake River.

- 5.2 This Agreement has been reached as the result of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceedings.
6. Dismissal or Stay of Pending Actions:
- 6.1 Based upon the foregoing and the parties' understanding that the Director will stay further administrative proceedings regarding his Order In The Matter of Designating the Thousand Springs Ground Water Management Area, and unless this Agreement is breached, the parties agree as follows:
- 6.2 The Idaho Ground Water Appropriators, Inc., and other plaintiffs agree to secure voluntary dismissal, without prejudice, of their Petition for Judicial Review and Complaint for Preliminary Injunction, Writ of Mandate, and for Declaratory Relief that they previously filed in the Sixth Judicial District Court.
- 6.3 Representatives of the holders of surface water rights agree to withdraw their July 2001 petitions seeking the establishment of ground water management areas, and the holders of ground water rights agree to withdraw their pleadings filed in response to the same.
7. General Provisions:
- 7.1 The provisions of this Agreement are not severable.
- 7.2 This Agreement shall bind and inure to the benefit of the respective successors of the parties.
- 7.3 This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.
- 7.4 Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.
- 7.5 This Agreement is executed in triplicate. Each of the three (3) Agreements with an original signature of each party shall be an original.
- 7.6 This Agreement shall be effective from October 11, 2001.
- 7.7 The parties to this Agreement may extend the term of this Agreement beyond 2003 by mutual consent on an annual basis.

The parties have executed this Agreement the date following their respective signatures.